IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 492 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DHIRUBHAI MADHABHAI - Appellant(s)

Versus

STATE OF GUJARAT - Opponent(s)

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Appearance :
MR BS SUPEHIA for Appellant(s) : 1,
Mr.R.C.Kodekar, APP for Opponent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA
and
HONOURABLE MR.JUSTICE MD SHAH

Date : 19/12/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE MD SHAH)

1. The present-appellant (original accused) in Sessions Case

no.150 of 1996 has filed this appeal under Section 374 of the Code of Criminal Procedure, 1973 against the judgment and order dated 15-3-1997 passed by the learned Sessions Judge, Bhavnagar, convicting the present appellant for the offences punishable under Section 302 of the Indian Penal Code and awarding sentence of life imprisonment, but no separate sentence was awarded under Section 135 of the Bombay Police Act.

2. In brief, it is the case of the prosoecution that the incident in question took place on 26th July, 1996 at about 1.30 p.m. to 2.30 p.m. near Plot no.513, Vijaynagar Lane of Vijay Cold Drinks situated on Bhavnagar Rajkot Highway. According to the prosoecution, the complainant-Ranjitsinh Bhikubha Sarvaiya brother of deceased Chandraba alias Chandanba was residing with his father, brother and two sisters as a tenant in the house of one Jasubha since one year from the date of incident. It is alleged that deceased Chandraba had illicit relations with the

present appellant-accused when they were residing near Bortala in the past as a result of which some quarrel ensued between the complainant and the accused. On 26th July, 1996, while the complainant Ranjitsinh Bhikubha Sarvaiya and Jasubha Ravubha who had gone out to collect some dues were returning to their house by bicycle, when they reached near the place of incident, they saw Chandraba being caught and dragged by the accused forcibly to take her with him, but as she refused to go with him, the accused got excited, took out a knife and inflicted ten to twelve knife blows on various parts of the body of Chandraba including the vital part of the body. Chandrabha shouted for help. On seeing the complainant and Jasubha, the accused ran away leaving his chappel (slippers) at the spot. Thereafter, people gathered there and someone informed the police, the police rushed to the spot and injured Chandraba was removed to the hospital where she was declared dead by the Doctor. The complainant-Ranjitsinh lodged complaint before the

police at Sir T.Hospital which was sent to the A-Division Police Station for registering the offence and after registering the offence, investigation commenced. The Investigating Officer drew the Inquest Panchnama, Panchnama of the scene of offence and arrest Panchnama of the accused. He also recorded the statement of certain witnesses and seized the clothes of the accused and the slippers of the accused under a Panchnama. The blood stained knife was discovered at the instance of the accused in presence of the Panchas. The Investigating Officer also collected blood stained earth from the scene of offence, sent the same to the Forensic Science Laboratory and the dead body of the victim was sent for postmortem examination. On completion of the investigation, charge-sheet was filed against the present appellant-accused in the Court of Judicial Magistrate (F.C.) at Bhavnagar. The case was then committed to the Court of Sessions at Bhavnagar under Section 209 of the Criminal Procedure Code and the charge Exh.3 came to be framed against

the accused for the offences punishable under Section 302 of the Indian Penal Code as well as under Section 135 of the Bombay Police Act. The appellant accused pleaded not guilty to the charge and claimed to be tried. To prove its case against the accused, the prosoecution has examined the complainant and other 9 witnesses and also produced documentary evidence like Inquest Panchnama, Postmortem Note, Discovery Panchnama of the blood-stained knife, FSL report etc. After recording the evidence of prosecution witnesses was over, the learned Judge recorded the statement of the appellant-accused under Section 313 of the Criminal Procedure Code. In his statement, the appellant-accused denied the case of the prosecution and stated that a false case has been filed against him and that he had no relations with deceased Chandraba, but did not examine any witness in support of his defence.

3. After hearing the learned Counsel for the respective parties, and on apprecition of the evidence adduced by the

prosecution, the learned Sessions Judge passed the judgment and order of conviction and sentence against the the accused as stated in paragraph 1 of this judgment, giving rise to the present appeal.

4. Learned Counsel for the appellant Mr.B.S.Supehia submitted that the complainant-Ranjitsinh Bhikhubhai Sarvaiya is the brother of the deceased and so he is an interested witness. He also submitted that there is major variation and contradiction regarding the place of incident as per the deposition of the complainant himself and the Investigating Officer. The complainant in his testimony at Exh.11 has stated that the complaint was lodged at A-Division Police Station, Bhavnagar while the Investigating Officer has stated in his testimony at Exh. 27 that the complaint was recorded at the hospital . According to the learned Counsel, the Panchas to the discovery Panchnama have also not supported the case of the prosecution

and they have turned hostile, and therefore, the discovery Panchnama cannot be looked into as there is no evidentiary value. He also submitted that the evidence of complainant suffers from infirmities and on the basis of such evidence, the appellant-accused could not have been convicted. According to the learned Counsel, the judgment and order of conviction and sentence cannot be sustained, and therefore, the appeal deserves to be allowed and the appellant-accused be acquitted of the offence with which he was charged.

5. Learned A.P.P. Mr. Kodekar on the other hand submitted that the evidence of the complainant is natural, trustworthy and corroborated in material particulars by the medical evidence and other evidence, and therefore, judgment and order of conviction and sentence passed by the learned Sessions Judge could not be said to be perverse, illegal or improper. According to the learned A.P.P., the learned Sessions Judge has considered the entire evidence on record in its right perspective, and therefore, there is

no reason to interfere with the findings recorded by the learned Sessions Judge and the appeal deserves to be dismissed.

6. No doubt, in this case, the case of the prosecution rests entirely on the deposition of brother of the deceased Chandraba i.e. the complainant-Ranjitsinh. Merely because the complainant is the brother of the deceased, his evidence cannot be discarded on that ground alone. It requires to be scrutinised minutely and with great care and caution. If the evidence of interested witness or of a relative is trustworthy, inspires confidence and gets corroboration from other evidence on record, the same can be relied upon and the conviction the Court can safely base conviction on the same. In this case, it is pertinent to note that the complaint is lodged immediately after the incident took place. The complainant in his evidence has specifically stated that the accused inflicted 10 to 12 blows on the deceased Chandraba and she received serious injuries, she was profusely bleeding and fell down on the ground. According to the

complainant, on seeing him and Jasuba, the accused ran away. As far as the presence of PW 2 Ranjitsinh- complainant at the scene of offence is concerned, it is totally supported by the evidence of PW 4 Kamabhai Vajabhai Bharvad at Exh.14 who is an independent witness as also the evidence of Jasubha Ravuba PW3 at Exh.13. It is pertinent to note that PW 4 Kamabhai Vajabhai even though he had not identified the accused, he had categorically stated in his testimony before the Court that he had seen one person wearing white bush-shirt and black-pant running away from the place of incident and that complainant and Jasubha were present there. PW 3 Jasubha Ravubha no doubt had turned hostile regarding the identification of the accused, but he had made a statement to the effect that on the day of the incident , he had the complainant while returning to their house after collecting some dues when they reached near the place of incident they found injured Chandraba.

6.1 PW 2 complaint-Ranjistsinh in his deposition at

Exh.11 as well as in the complaint has specifically stated that the accused had inflicted 10 to 12 knife blows on the deceased and this version of the complainant is supported by the evidence of PW 1 Dr.Harkantbhai Baishankerbhai Rajyaguru at Exh.9 as he had stated in his testimony before the Court that he had performed the autopsy of the dead body of Chandraba and he found 12 injuries on the dead body of Chandraba.

7. Coming now to the question of variations and/or contradictions pointed out by the learned Counsel for the appellant accused as regards the place of lodging of complaint, it is true that the complainant in his chief examination Para 5 had stated that the PSI, A-Division Police Station came to the hospital and before him he had lodged the complaint whereas in his cross-examination, he stated that he lodged complaint at A-Division Police Station. However, the complainant being illiterate person hailing from a poor strata of society in a remote village such variations and contradictions are bound to occur,

especially when, he has been cross-examined at length by the advocate for the defence. In view of this, merely because of such variations and contradictions in his evidence, his evidence cannot be discarded altogether, more so, when the Investigating Officer in his evidence had corroborated the say of the complainant that the complaint was lodged at the hospital.

7.2 PW 10 Kaushik Patel, the Investigating Officer in his testimony at Exh.27 has stated that upon receiving information from an unknown person regarding the incident, he immediately rushed to the spot where he found the injured-Chandrabhai. According to him, the complainant was also present there at that time. He has also stated that bloodstained earth found at the scene of offence was collected by him and forwarded to the FSL and according to the FSL report, the blood was of B positive group and that the blood group of the deceased was also B positive. The I.O has also clearly stated in his evidence that the bloodstained knife was recovered at the instance of the accused

from a remote place and that the blood found on the knife was also found to be of B positive group i.e. the blood group of the deceased Chandraba as per FSL report. The Investigating Officer has also stated that the bloodstains found on the clothes of the deceased which were seized under the Panchnama was also found to be of B postive group and the blood stains found on the bush-shirt recovered from the accused was also of B posiive group i.e. the blood group of the deceased Chandraba as per the FSL report. Thus, the discovery of blood of same group as that of the deceased on knife used in the commission of offence and bush-shirt recovered from the accused goes to show that the appellant-accused had committed the murder of the accused. Thus, the finding recorded by the learned Judge that the appellant had caused injuries to the deceased Chandraba by means of inflicting knife blows being eminently just is hereby upheld.

8. On overall appreciation of the evidence we are satisfied

that there is no infirmity in the reasoning assigned by the learned Judge in recording conviction of the appellant-accused under Section 302 of the Indian Code which does not call for our interference in the present appeal.

9. The net result of the above discussion is that the prosecution has proved beyond reasonable doubt that the appellant-accused had committed murder of the deceased-Chandraba and there is no merit in the appeal. The appeal is therefore liable to be dismissed.

10. For the foregoing reasons, the appeal fails and is dismissed. Muddammal articles to be disposed of in terms of the directions given in the impugned judgment.

(R.P.Dholakia,J.)

(M.D.Shah,J.)mds-lee